Monterey Drilling Company *and* Operating Engineers, Local Union No. 3, International Union of Operating Engineers, AFL-CIO. Cases 20-CA-14706 and 20-CA-14739

April 1, 1981

DECISION AND ORDER

On September 26, 1980, Administrative Law Judge Earldean V. S. Robbins issued the attached Decision in this proceeding. Thereafter, the Charging Party filed exceptions and a supporting brief, and Respondent filed a reply brief.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1] and conclusions[2] of the Administrative Law Judge and to adopt her recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Monterey Drilling Company, Carson, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] The Charging Party has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing her findings.

[2] Based on the credited testimony of employee Steed and the absence of any exceptions, we affirm the Administrative Law Judge's finding that Respondent's supervisor, Hayes, coercively interrogated Steed in violation of Sec. 8(a)(1) of the Act. Unlike the Administrative Law Judge, however, we find it unnecessary to consider whether an unfair labor practice charge would lie if Hayes' version of his conversation with Steed were credited.

DECISION

STATEMENT OF THE CASE

EARLDEAN V. S. ROBBINS, Administrative Law Judge: This case was heard before me in San Francisco, California, on various dates in April and June 1980. The charge in Case 20-CA-14706 was filed by Operating Engineers, Local Union No. 3, International Union of Operating Engineers, AFL-CIO, herein called the Union, on July 12, 1979, and served on Monterey Drilling Company, herein called Respondent, on July 13, 1979. The charge in Case 20-CA-14739 was filed by the Union on July 24, 1979, and served on Respondent on July 25, 1979. The consolidated complaint, which issued on December 11, 1978, alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relation Act, as amended, herein called the Act.

The principal issues herein are whether employees James Borgna and Earl Gillian were discharged by Respondent because of their union activities and whether Respondent unlawfully threatened and interrogated employees.

Upon the entire record, from my observation of the demeanor of the witnesses, and after due consideration of the post-hearing briefs, I hereby make the following:

FINDINGS OF FACT

I. JURISDICTION

Respondent, a California corporation, with an office and place of business in Carson, California, is engaged in providing oil and gas drilling and related services and at all times material herein has operated a gas drilling rig at Rio Vista, California. During the 12-month period ending October 1979, Respondent, in the course and conduct of said business operations, has provided services valued in excess of $50,000 for other enterprises within the State of California, including McCullough Oil, which are directly engaged in interstate commerce.

The complaint alleges, Respondent admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, Respondent admits, and I find that the Union is now, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Union's Request for Recognition and the Alleged Threats and Interrogations*

Respondent is engaged in drilling oil and gas wells and steam shafts. Craig Norton is its president. Prior to the formation of Respondent approximately 2-1/2 years ago, Norton had been manager of Camay Drilling for about 6 years. As manager of Camay, Norton has dealt with and has negotiated collective-bargaining agreements with the Union without any particular difficulty. Through their dealings, Norton and Robert Mayfield, vice president of the Union, have achieved an amicable relationship and have acquired a mutual respect for each other. Respondent's employees have never been represented by the Union.

In June 1979,[1] Respondent was drilling a gas well in the Rio Vista area with rig B. The rig was operated 24 hours a day, 7 days a week, with three shifts, known as the morning tour from 12 midnight to 8 a.m, the daylight tour from 8 a.m. to 4 p.m., and the evening tour from 4 p.m. to midnight. The employee complement consisted of four crews of five persons each. There was a crew for each shift and a relief crew which manned the rig during the off days of the other crews. Each crew was composed of a driller, who operates the controls and is in

[1] All dates hereinafter will be in 1979 unless otherwise indicated.

charge of the crew; a motorman, who maintains the motors; a derrick man, who maintains the pumps and works in the derricks above the floor of the rig; and two floorhands, who perform general labor chores and assist the rest of the crew as needed. The crews worked on a rotating schedule with 6 days on the same tour, 2 days off and then 6 days on a different tour. The tool pusher is in overall charge of the rig and crews. He works 14 days on, 7 days off and is on call 24 hours a day. There is a relief pusher for his days off. All crewmembers are paid an hourly rate and subsistence at the location involved herein.

In June, the Union began organizing Respondent's employees on rig B. On June 22, Mayfield telephoned Norton and told him that the Union had obtained authorization cards from a majority of the employees on rig B and he hoped Norton would sign a contract. Norton said that he was unaware of any organizing drive at the rig, but if a majority of the employees wished to be represented by the Union, he would sign a contract. Mayfield proposed a card check. Norton agreed and, in a subsequent telephone conversation, they scheduled a meeting in Los Angeles for June 27.

Norton testified that thereafter when he discussed this matter with his partner, Bob Johnson, Johnson said the employees did not want to be in a union. Apparently this observation was based on the fact that Respondent was paying $20 daily subsistence to employees on rig B which was located in a zero-subsistence area under the Union's contract. Norton said perhaps they should get some help and work it out so that the employees would get what they wanted. On June 25 or 26, Norton contacted an attorney, Stanley Tobin, for advice. Tobin advised that under the circumstances they should have an election.

Sometime between June 22 and 27, J. C. Wishby, Respondent's drilling superintendent, telephoned Donald Hayes, the tool pusher on rig B, told him the Union claimed it represented a majority of the employees on rig B and asked if Hayes knew whether this was true. Hayes said he did not know but he would try to find out. Wishby asked Hayes to report back to him.

Following this telephone conversation, Hayes admittedly proceeded to ask all of the employees if they were union. According to Hayes, Wishby did not ask him to do this. He then reported to Wishby that he had talked to the employees and, according to them, they did not want the Union. On June 27, Norton, Tobin, and Mayfield met as scheduled. Tobin told Mayfield that Respondent did not question Mayfield's representation, that he had signed authorization cards from a majority of the employees, but that Respondent had information that despite the cards, the majority of the employees did not want to be represented by the Union. Tobin said Respondent would agree to an expedited election within 17 days or less and would agree to a consent election. Mayfield expressed his displeasure, stating that he thought they were meeting to sign a contract. Tobin said that would be improper under the circumstances. Tobin further said that pending the election, Respondent would take no action to undermine the Union's strength except to relate to employees, within the framework of the Act, Respondent's position.

Immediately after this conversation concluded, Tobin explained to Norton the restrictions of Section 8 of the Act and advised him that pending the election, Respondent should not discharge any employees unless it was for a clear-cut case of failure to perform duties. Later, Wishby told Hayes that Tobin had advised that Respondent should not discharge anyone that had anything to do with the Union. Thereafter, prior to June 27 when Hayes went on vacation, Hayes told all the drillers not to discharge anyone unless they just had to, unless it was really bad. He said if they discharged anyone, to make sure there was a really good reason. Around that same time, Hayes also told the drillers that next time a stuffing box went bad, to discharge whoever was responsible.

James Borgna testified that in June, prior to June 16 when he signed a union authorization card, Hayes asked him, in the presence of driller Larry Farmer, if he had a union card. Borgna said "yes," he had a withdrawal card. Borgna also testified that in mid-June, Hayes and driller Gene Taylor were in Hayes' car. Hayes asked if Borgna had a union card. Borgna showed him his card. Hayes said if it went union, Respondent would move out of State. However, Borgna also testified that he had only one conversation with Hayes in which the Union was mentioned and, on cross-examination, he testified that the mention of moving the rig was in a second conversation, that some employee asked Hayes if it were true that the rig would be moved out of State if the Union came in, but he does not recall Hayes' answer.

Borgna also testified that in the same conversation where Hayes first asked him if he had a union card, Farmer asked the same question and Borgna answered "yes." However, Borgna earlier testified that Farmer said nothing during this conversation. Farmer denied asking this question and Hayes denied that he ever told any employee that if they selected the Union as their representative the rig would be moved to Wyoming or that there would be any loss of employment. According to Hayes, several employees asked him if the rig would be moved to Wyoming and/or if they would lose their subsistence if they voted for the Union. In each instance, Hayes said he did not know. Hayes further testified that the rumor regarding moving to Wyoming started prior to the union activities when someone, whom Hayes did not identify, said that Respondent would keep the rig working even if it meant moving it to Wyoming. I do not credit Borgna. I found him to be an unreliable witness whose testimony was confused and conflicting.

Gillian testified that in late June, Hayes asked him if he had a paid up union card. Gillian said yes. Hayes said "okay" and Gillian left.

Steed testified that about June 23 Hayes asked him if he had signed a union authorization card. Steed does not recall what he answered. Hayes said someone had called Respondent the previous day stating that the Union had enough authorization cards to require an election. Hayes said he had been told that if it came down to a vote, Respondent would finish the wells and move to Wyoming. About 2 days later, according to Steed, he and Hayes

were discussing the Union. Hayes said that Respondent was adamant about not going union and would move the rig to Wyoming if it came to a vote. Hayes further said he had been told by someone in the office that no one, including him, would go to Wyoming with the rig. I credit Steed who impressed me as an honest, reliable witness. In this regard I note that Hayes did not specifically testify as to a conversation with Steed. Rather he admits being engaged in conversations with various employees regarding a possible move to Wyoming and generally denied that he ever said anything in this regard other than to answer a specific question by saying he did not know. Even crediting Hayes' version, I find the conversation to be coercive. When an employee expresses to a supervisor fear of being discriminated against because of union activities, that supervisor has an obligation to reassure the employee that the employer will not engage in discrimination against employees because of their union activities. A denial of any knowledge as to whether the employer will discriminate or will not discriminate does nothing to alleviate these fears but rather predictably tends to reinforce them and is thus coercive.

Ron Hamilton, a derrickman, testified that about June 21 driller[2] Roger Nell asked him if he belonged to the Union. Hamilton said he did. Nell said that Hayes told him that the office had told Hayes to discharge the union employees. Hamilton said he belonged to the Union and he was not going to let his card go, that it cost too much money to get it back. Hamilton's testimony is essentially undenied. Nell testified that on this occasion, he and Hamilton were drinking heavily. According to him, he did not recall making such statements. He denied that Hayes or anyone else in management ever told him of any adverse consequences which would result from the union activities of the employees. I credit Hamilton.

Robert Ellis testified that in late June and early July, he had several conversations with Hayes during which Hayes made the same remark, that it seemed foolish to vote for union membership when it would imply an hourly pay cut and less subsistence. During the first of these conversations, two crewmembers were present. Also during the latter part of June, Hayes drove up to where several employees were standing, Ellis walked up to Hayes and said, "Well, I got a union card." Hayes said something about a pay cut if they voted for the Union. Ellis then backed away from the car and did not hear Hayes say anything else.

However, in his prehearing affidavit, Ellis stated that Hayes told them that someone in the office told him that if the rig went union, Respondent would probably move the rig out of State. Ellis denies that he actually heard Hayes make this latter statement. Rather, according to him, one of the employees who was standing closer to Hayes told him that Hayes had made this statement. I credit Ellis' denial that he heard Hayes make this statement. Although Ellis' attendance at the hearing had to be compelled and his memory at times had to be refreshed with his prehearing affidavit, he impressed me as trying to testify honestly and truthfully.

The General Counsel argues that Respondent violated the Act by statements of Hayes and Farmer as to loss of pay and subsistence. I find these statements to be noncoercive. It is undisputed that in the latter part of June and the early part of July, the possibility of union representation was a major subject of conversation among the employees, including the drillers and sometimes the pushers, in the doghouse where they ate lunch and changed clothes before and after shifts. The conversation tended to revolve around two subjects (1) that if they went union they would lose their $20 daily subsistence pay[3] and possibly $1.40 in wages which Gillian argued went into the pension and vacation funds under the union contract, and (2) whether the rig would move to Wyoming if they went union. Many of the employees stated that they would not vote for the Union because they did not want to lose the subsistence pay. Some of the drillers, including Farmer, remarked that they could not understand why the employees wanted union representation on the rig when it would mean a cut in pay.

It is thus clear from the record that not only did the employees spend a lot of time discussing an anticipated loss of pay and subsistence, but that this was based upon their comparison of Respondent's pay and subsistence scale with that required by the union contracts in that area. Under the circumstances, I find it highly unlikely that any employee would ascribe a comment in this regard to anything other than reference to the difference in pay and subsistence being paid by Respondent and that required under the existing union contracts. I further find nothing coercive in Hayes' response to employees' questions that he did not know whether there would be loss of pay and subsistence. Accordingly, I find that Respondent did not violate Section 8(a)(1) of the Act by the statements of Hayes and Farmer in this record. However, I do find that Respondent violated Section 8(a)(1) of the Act by Hayes' and Nell's interrogation of employees as to whether they were union members or had signed union authorization cards; and by Hayes' threat that the rig would move to Wyoming and none of the present employees would move with the rig if the employees selected the Union as their collective-bargaining representative; and by Nell's threat to Hamilton that someone in the office said Respondent would discharge union employees.[4]

[2] Based on their authority to hire, discharge, and discipline employees, I find that the drillers in Respondent's employ are supervisors within the meaning of Sec. 2(11) of the Act.

[3] At times some mention was made by employees as to the possibility of a decrease of $1.40 an hour in wages if the rig went union. The rationale for this is not clear on the record; however, there is nothing in the record to indicate that it was based on anything other than what they understood to be the wage rates in the union contracts existing in the area.

[4] Steed testified that, in late June or early July, relief pusher Bob Walker told him that someone in the office had said they were not to do any more hiring of people from the Union. This was not alleged in the complaint as violative of the Act and Walker did not testify. I denied General Counsel's motion to amend the complaint to allege this conduct which was made after General Counsel rested and after Respondent had moved to dismiss the allegations of the complaint relating to Walker as no evidence had been adduced in support thereof. In her brief, counsel for the General Counsel requested that I reconsider her motion. I have done so and I adhere to my original ruling.

B. *The Discharge of Gillian and Borgna*

Gillian and Borgna were hired by Respondent on May 15 and 13, respectively. They worked on the same crew and they traveled to and from work together. Borgna was a floorhand and Gillian was a derrickman. They both signed union authorization cards on June 16. On July 4, according to Borgna, Larry Farmer, the driller on his crew, told him he and Gillian was discharged. Borgna asked if it had anything to do with his work. Farmer said "no," and further said he had two replacements reporting for work the next day.

On cross-examination, Borgna's account of this conversation contains no reference to him asking if it had anything to do with his work. Rather, he testified that he did not say anything that he could remember and that Farmer only said that he had two replacements coming out. Borgna also testified that he was positive that he said nothing about the Union. Then, after being shown his prehearing affidavit, he admitted that he asked Farmer if it was anything to do with the Union and Farmer replied, "no." Robert Ellis and Sam McDowell, the floorman and motorman, respectively, on their crew, were present. McDowell did not testify and, although Ellis testified, he was not questioned in this regard.

Gillian came in later. Borgna told him that they had been discharged. According to Gillian, they went up to Farmer and Borgna asked why they were discharged. Farmer said nothing personal, that Walker had discharged them. As Borgna and Gillian were returning to Rio Vista from the rig, they met Walker. According to Gillian, Borgna asked why they were discharged. Walker said Farmer had discharged them and that he had two men to replace them the following morning. Borgna testified that Walker's response to his question was that Farmer had two men to replace them.

Farmer testified that he told Borgna and Gillian that he was discharging them. Gillian asked if it was because of his union activities. Farmer said no. Gillian asked why. Farmer said because of the washout and the air-tugger. Borgna also asked why he was discharged. Farmer said because he was too slow. I credit Farmer as to this conversation. In this regard, I note that in Borgna's prehearing affidavit he admits that Gillian asked if the discharge had anything to do with the union activity and Farmer said "no." I find it unlikely that when confronted with what amounted to an accusation of a discharge for union activity, which he denied, Farmer, upon further probing for a reason by Gillian and Borgna, would not reinforce his denial by mentioning the washout of the stuffing box and the air-tugger incident. Whether pretextual or not, these were not incidents that Farmer had to dredge out of the past and might not have remembered at the time of the conversation. Rather, the stuffing box had just washed out the previous week and the air-tugger incident occurred that day or the previous day and thus could normally be expected to immediately come to mind. Further, I note that Borgna does not corroborate Gillian's statement that Farmer said it was nothing personal, that it was Walker's decision. In all the circumstances, I find that Farmer's version is more consistent with the record as a whole and that he was a more reliable witness than Gillian and Borgna.

The complaint alleges that Respondent discharged Gillian and Borgna because of their union activities. Gillian and Borgna both signed union authorization cards on June 16. Hayes admits that Gillian was one of the two or three employees who answered affirmatively when he inquired as to whether they were union. Borgna testified that he answered that he was union and had a withdrawal card. Borgna also testified that at various times, in the presence of Hayes and Farmer, other employees stated that they were members of the Union. Farmer testified that Borgna volunteered information that he had a withdrawal card. It is not clear from the record whether this was during the Hayes conversation, at which Farmer was present, or at some other time. Farmer further testified, without contradiction, that in June, Borgna told him that it would cost him $500 to get reinstated in the Union. He said he did not like the idea of having to pay the $500 and if they had to vote, he would not vote for the Union.

It is undisputed that Gillian was one of the most vocal of the union supporters. He argued that they should go union regardless of any loss of pay, that it really was not a loss as to hourly wages because the amount of the decrease was actually going into the pension and vacation funds. He also argued that the Union had done much to improve wages, benefits, and working conditions in the oilfields.

Gillian testified that from mid-June until the date of his discharge, he had a half-dozen to a dozen conversations with Farmer, mostly in the doghouse in the presence of the other crewmembers. All of the conversations were pretty much the same. Farmer said he had never belonged to a union and that he never would. Gillian said he liked, and was for, the Union. Farmer said they would lose their $20 subsistence plus they were making $1 an hour more being nonunion. Gillian said "you come out ahead by belonging to the Union," that the benefits—hospitalization, insurance, retirement, vacation pay and the credit union—were better than the extra money because you did not have to pay income tax on it and the subsistence pay would not make that much difference because if they went union and the rig moved they might have the same subsistence. During these conversations, according to Gillian, McDowell and Ellis said they would not vote for the Union because they did not want to lose the subsistence pay.

Respondent contends that Borgna and Gillian were discharged because of poor work performance and because they could not get along with the driller on their crew.[5] Hayes testified that when the rig first moved from the Clearlake to the Rio Vista area, he was told that it was only going to be for that one job, 60 to 80 days, and he communicated this to the crew. Instead, when the well was finished on the Peterson Ranch in

[5] There was a lot of testimony concerning crewmembers not being able to get along with drillers. Respondent's argument is that it is common for drillers to discharge crewmembers with whom they did not get along. I conclude from the testimony as a whole that the record does not support such a broad contention. However, it does appear from the record that it is important that crews work well together and that a factor which may figure wholly or partially in some discharges is the failure of a crewmember to adapt to the driller's style of leading the crew.

June, the rig moved to the Hastings Island location in the Rio Vista area. This decision resulted in low morale among the employees most of whom wanted to return to Clearlake, with an accompanying tendency to sloppiness in work performance. Around the first of June, Hayes told all of the drillers individually that the work performance of their crews would have to improve or they would be discharged.[6] Thereafter, he repeated these comments to the drillers several times a week.

Hayes was particularly concerned regarding some difficulties they were having with the stuffing boxes on the pumps. Certain liquid chemicals, referred to as mud, are used in the drilling process. The mud is contained in a closed system and during the drilling process it is pumped from a tank through a pipe into the ground and recirculated back through the tank.

Proper operation of this system requires that the mud be contained within the system with no leakage to the outside. A device referred to as the stuffing box is critical to the retention of the mud within the system. To prevent the mud from escaping when the pump is operating at the normal 2,000 pounds of pressure, the stuffing box is packed with a special type of packing held in place with a gland nut. As the packing wears down, the gland nut has to be tightened and when the packing becomes so worn that it cannot effectively prevent leakage, the packing has to be replaced.

Monitoring and adjusting or replacing the packing is the function of the derrickman. If the packing is not adjusted or replaced properly and timely, leakage will oocur. Within an half-hour to an hour at high pressure, a leakage can result in severe pitting or grooving or in a hole, and packing will no longer be effective in containing the fluid within the system. This is referred to as a washout, and the stuffing box must be repaired or replaced. Washouts are not a common occurrence. If the leakage persists for 1 to 2 hours, major damage to the pump may result, and certainly it would after several hours.[7]

On June 10, when attempting to test a blowout preventor, the pump would not operate properly. Upon investigation by Hayes and Gene Taylor, the driller on duty, it was discovered that there had been a washout of a stuffing box. Hayes checked the stuffing box to ascertain the last time the pump had been in operation. The check revealed that probably the last time the pump was in operation at full pressure was during Gillian's shift. The pump had operated for 6-3/4 hours on that shift.

The driller on Gillian's crew and all the other drillers denied that a washout oocurred on their shifts. Because of this, according to Hayes, and because certain operations were in progress which might have legitimately diverted Gillian from giving the stuffing box packing the proper attention, Hayes decided not to discharge Gillian. However, Hayes told Taylor and Al Johns, the driller on Gillian's crew, that he suspected Gillian was responsible for the washout and if it ever happened again, on Gillian's shift, he would discharge Gillian. Hayes also told Johns to keep an eye on Gillian. Hamilton testified that on June 10, Taylor, who roomed with Hamilton, told him that there had been a washout and that Hayes thought Gillian was responsible. Hayes also told all the drillers that if a washout occurred on their shift, the derrickman should be discharged. The stuffing box was replaced within a couple of days.

On June 21, Farmer replaced Johns as driller on Gillian's crew. As was his usual procedure, Hayes told Farmer that he was responsible for the crew's performance, that if a crewmember was not performing satisfactorily, Farmer should discharge him. Farmer said he did not think he could handle the crew. He said he had observed the way Johns ran the crew with a lot of close supervision and yelling, that this was not his style, and he asked if he could replace the crew. Hayes asked him to give it a try.

Prior to his leaving on his vacation, Hayes told Farmer that they were having difficulty with the work performance of the crew and he wanted the drillers to pay stricter attention to the crews' work performance.[8] Hayes also told Farmer about the June 10 washout, that he suspected that Gillian was responsible, that Farmer should keep his eye on Gillian's monitoring of the pumps, and that if a washout occurred on his shift, Farmer was to discharge Gillian and, if he did not, Hayes would discharge Farmer. Farmer testified that he told Gillian that Hayes thought Gillian had been responsible for the washout.

It is undisputed that Farmer and his crew did not have the best of working relations. He made no attempt to disguise that he thought they were not a good crew and, on occasion, hinted that he might discharge them. The crew had the same lack of respect for Farmer and often referred to him as a "worm." This is a term sometimes used in the industry to describe an inexperienced driller whose lack of experience or ability endangers the crew.

Farmer testified that, after working with the crew for several days, he was sure that he could not work well with them. According to him, Borgna constantly had to be told what to do; further, he was slow. That is, he would manage to delay his response just long enough for another crewmember to do a job that Borgna should have been doing. On one occasion, according to Farmer's undenied testimony, he remarked to Borgna "that's kind of slow." Borgna said he did not "give a shit." Farmer admits that he never actually warned Borgna as to his work. Rather, he tried to joke around that Borgna should work faster. He admits that Borgna may not have taken these remarks seriously. Farmer also felt that Gillian's attitude was bad. Thus his undenied testimony is that Gillian would frequently initiate arguments in the doghouse regarding the work performance of crewmembers. Further, according to Farmer, Gillian had a poor attitude toward his work. Thus, his undenied testi-

[6] Hayes credibly testified that it was his practice to tell each driller he hired that the crew was the driller's responsibility, he had to work them and they had to please him; but if a crewmember could not get the work done, then he should discharge him.

[7] A replacement stuffing box costs around $1,000 and a pump costs around $200,000.

[8] Farmer testified that Hayes said they were *starting* to have difficulty and he wanted the drillers to *start* watching the crew. General Counsel argues that the use of the words *starting* and *start* are significant as to Farmer's credibility. I do not agree.

mony is that on one occasion, a couple of hours before the end of the shift, he discovered a leak in the stuffing box. He asked Gillian to tighten it; Gillian remarked that it would last to the end of the shift. Farmer told him to tighten it nevertheless. Farmer also testified that, during the rig-up prior to July 4, Walker told him three or four times that his crew was moving too slow, that Farmer was not directing them fast enough. I credit Farmer as to these conversations.

In the latter part of June, after Farmer became a driller and before the rig was dismantled for the move to Hastings Island, another washout occurred on Gillian's shift. The exact date of the washout is not established by the record. It is undisputed that the rig move occurred while Hayes was on vacation and his vacation started on June 27. Farmer testified that Hayes was on vacation and Woods was the pusher. Gillian testified that it occurred on either the first or second day that he worked for Farmer, which would have been either June 21 or 24 since the parties stipulated that the crew was off duty on June 22 and 23. Gillian also testified that it occurred on the morning shift which would have been the shift he worked June 24 through 29. In the circumstances, I conclude that the washout occurred between June 27 and 29 and that, because of the time it took to move the rig, it was more likely to have been on June 27 than on June 29.

Farmer testified that he was not sure that the washout occurred on his shift. According to him, the pump pressure gauge had given him no warning and Gillian had reported nothing untoward. He checked with several persons in an effort to ascertain responsibility. Taylor and Ray Livingston, the driller and derrickman on the shift preceding Gillian's shift, said they thought Gillian was responsible; however, Farmer does not recall what reasons, if any, they gave for reaching this conclusion.

Gillian admitted that the washout occurred on his shift. However, he testified that he informed Farmer that there was a problem. According to Gillian, this was on the morning shift. As usual, the first thing he did was to check the mud and the pumps. The rod was leaking, so he tightened the packing and then told Farmer the rod was leaking. Farmer came down, poked at it and commented that the leak was bad. Gillian agreed but said he thought he had stopped it by tightening the packing. He said he thought it was leaking inside the packing. Gillian said it was not the stuffing box and since the rod was already scored it would not hurt to keep tightening the packing. Farmer told him to keep an eye on it.

Gillian testified that Farmer looked at the pump three or four times during the shift. Gillian kept tightening the packing. According to Gillian, the stuffing box washed out about an hour before the end of the shift. He started to remove the packing but had not finished by the end of the shift. Ellis testified, without contradiction, that about midway through the shift Gillian told him that there was a leak in the stuffing box but it would probably last through the rest of their shift. According to Ellis, there was a washout within hours thereafter. He thought it was on the next shift.

Following this washout, Farmer went to Woods, the relief pusher on duty, told him he was not satisfied with Gillian's work, related to him the stuffing box incident and what Hayes had said should be done in the event of a stuffing box washout, and asked for approval of the discharge of Gillian. Woods told him to wait until Hayes returned. On July 3 or 4,[9] as the rig-up was continuing, Gillian was lifting something with the air-tugger. As he started to let it down, according to Farmer, he used the gears when he should have used the brake which caused the shaft to break. Farmer considered this to be negligence.[10] Gillian testified that the break was not caused by his operations but rather the air-tugger malfunctioned. Steed testified that the air level was "touchy on the air-tugger and if you gave it a little too much air, it would go too fast." According to Gillian, Farmer did not say anything to him about the air-tugger when it broke.

Later that day, according to Farmer, he told Walker, who was then working as relief pusher, that Gillian broke the air-tugger. Walker asked if he was sure. Farmer said "yes." Farmer asked if he could discharge Gillian and also if he could discharge Borgna because he was too slow. Walker asked if he was sure. Farmer said he was sure he wanted to discharge them. Thereafter, on July 3, Walker contacted a friend—Hancock—whom he had promised to hire as soon as a job was available on his crew. He told Hancock he was going to discharge Gillian and Borgna and needed two hands. Farmer asked if Hancock knew of a second person. Hancock said "yes," his brother was a good hand. Farmer said he would give Hancock's brother a try. On July 4, Farmer told Hancock that he and his brother should report for work on July 5.

On July 7, according to Ellis, he and Farmer were discussing Gillian. Farmer said he just could not get along with Gillian, that he wanted a crew that could work in harmony, that this made it much easier for everyone. Farmer asked if Ellis was upset because Farmer discharged Gillian. Ellis said Gillian was his good friend, that he did not think it was right but he was not the driller. He also said he agreed that Gillian and Farmer could not get along. Ellis asked if the discharge had anything to do with the Union. Farmer said no. They then discussed Gillian's open arguments in support of union representation. Farmer said he was against Gillian arguing for the Union, that it caused problems within the work force because some wanted union representation and some did not. Ellis said it would be all right if it were not at the worksite. Farmer said, "Yes, I agree." Ellis also testified that, on several occasions, Farmer told him he was nonunion and proud of it. He said he disliked the Union and did not like working for a union company.

The General Counsel contends that the reason asserted for the discharge of Gillian is pretextual since the derrickman was not discharged when a stuffing box washed out during the latter part of July. I find no merit in this

[9] According to Gillian it was July 4. According to Farmer, it was July 3. General Counsel argues that this date is significant in that, according to Gillian's testimony as to date, Farmer sought Walker's permission to discharge him prior to the air-tugger incident. However, considering Gillian's erroneous testimony as to the date of the stuffing box incident, I conclude that his testimony cannot be relied upon as to exact dates.

[10] He has only seen it happen twice in 12 years.

contention inasmuch as the derrickman properly, and apparently accurately, reported the problem and Hayes made a decision to continue operating the pump notwithstanding the certainty that continued operation would result in a washout. I credit Hayes that he based his decision on his determination that an emergency situation existed, and cessation of operation of the pump would likely result in much greater damage than would flow from the washout of the stuffing box.

I find the evidence insufficient to establish that Borgna was discharged because of his union activities. His activities consisted only of signing a union authorization card. This activity was no different in kind from that of many of the other employees. Further, Borgna had told Farmer that he would vote against the union because he was on withdrawal from the union and did not want to pay the reinstatement fee. There was no reason for Farmer not to believe this statement since, despite the union membership of a number of the employees and the apparent signing of union authorization cards by a majority of the employees, most of the employees were expressing among themselves the intention to vote against the Union for financial reasons.

The General Counsel suggests that Borgna was discharged because he was a friend of Gillian. However, the record does not establish any direct evidence of such motivation nor does it establish a relationship between Gillian and Borgna sufficient to support such an inference. The only evidence as to their relationship is that they were considered to be friends and they rode to and from work together. However, Ellis considered himself to be a friend of Gillian and Farmer apparently also considered them friends. Yet, Ellis was not discharged. There is no evidence that Gillian and Borgna worked as a team for they were hired separately. Also there is no evidence that Gillian exerted any more influence over Borgna as to union activities than he did over any other employee or that Respondent had any reason to suspect such.

As to Gillian, apparently he was the most vocal of the union supporters. However, it is also apparent from the record that Farmer wanted a new crew and that Gillian was the most vulnerable of the crew because of the June 10 stuffing box washout. Regardless of whether Gillian was, in fact, responsible for that washout, Hayes' preunion activity statements[11] indicate that he thought Gillian was responsible and intended to discharge him if another washout occurred under circumstances which pointed to Gillian. Before he left on vacation, he told Farmer to watch Gillian and to discharge him, or anyone else, if he was responsible for another washout. The consequences of failing to do so, Hayes warned, would be Farmer's discharge.

Thereafter, once again a stuffing box washed out under circumstances indicating Gillian's responsibility. I credit Farmer that Gillian did not tell him that there was a leakage problem. However, even assuming, *arguendo*, that Gillian's account is accurate, Farmer's perception of Gillian's responsibility probably remained the same. Thus, if Gillian's account is believed, he told Farmer that the leak was within the packing, that it was not the stuffing box, an opinion that proved unreliable. This would have left Farmer with two options. Either he was responsible or Gillian was responsible and Farmer did not impress me as a driller who, to his own disadvantage, would protect this crew of which he wished to rid himself. When Farmer checked with the driller and derrickman of the preceding shift, they placed the blame on Gillian. This, along with Gillian's attitude, expressed few days earlier, that he need not rectify a leaky situation since it would last to the end of his shift, served to indicate Gillian's responsibility for the washout.

Farmer immediately reported what had occurred to Woods and sought permission to discharge Gillian. Woods refused, stating that Farmer should await Hayes' return. This does not seem to be the act of an employer determined to rid itself of a union activist. Rather the evidence tends to establish that it was Farmer who was determined to be rid of Gillian and the evidence is insufficient to establish that this determination was based on anything other than his desire to restaff his crew with workers more to his liking. Certainly this determination would have been reinforced by Walker's criticism that Farmer was working his crew too slowly.

Finally, Gillian gave Farmer another opportunity. He broke the air-tugger and again Farmer sought permission to discharge him. This time Walker agreed. In all the circumstances, I find that the evidence is more consistent with Gillian being discharged because Farmer wanted to get rid of him for reasons unrelated to union activities than with the allegation that Gillian was discharged because of his union activities. Accordingly, I find that the evidence is insufficient to establish that Gillian and Borgna were discharged for any reason other than that asserted by Respondent—Farmer's dissatisfaction with their work. Accordingly, I find that Respondent did not violate Section 8(a)(1)and (3) of the Act by the discharge of Gillian and Borgna.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by coercively interrogating employees concerning their support for and their membership in the Union; by threatening its employees with loss of employment if they select the Union as their collective-bargaining representative; and by threatening its employees that it will move its operations out of the State of California if they selected the Union as their bargaining representative.
4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.
5. Respondent has not violated the Act as alleged in the complaints herein except as set forth above.

[11] The record does not establish when the union activities commenced. The earliest evidence on the record is the June 16 signing of the authorization cards.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom, and take certain affirmative actions designed to effectuate the policies of the Act.

In the event that Respondent's operations in Rio Vista have been completed, it is recommended that Respondent mail to all its employees employed on rig B in the Rio Vista, California, area from June 22 to July 4, 1979, a copy of the notice which would otherwise have been posted, if said operations had not been completed. *Brown & Root, Inc.*, 234 NLRB 718 (1978).

Upon the foregoing findings of facts, conclusions of law, and the entire record herein, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby issue the following recommended:

ORDER[12]

The Respondent, Monterey Drilling Company, Carson, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees concerning their support for and their membership in the Union.

(b) Threatening employees with loss of employment if they select the Union as their collective-bargaining representative.

(c) Threatening employees that it will move its operations out of the State of California if they select the Union as their collective-bargaining representative.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

(a) In the event its operations are still in progress in Rio Vista, California, post at said project copies of the attached notice marked "Appendix."[13] Copies of said notice, on forms provided by the Regional Director for Region 20, shall after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and remain posted as long as Respondent's operations in Rio Vista, California, are in progress but for a period no longer than 60 days from the date of posting, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) In the event that such operations have been completed, as described in the section herein entitled "The Remedy," mail copies of the aforesaid notice to the employees specified therein.

(c) Notify the Regional Direction for Region 20, in writing, within 20 days from the date of this Order, what steps it has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refrain from the exercise of any or all such activities.

WE WILL NOT coercively interrogate our employees concerning their support for, and membership in, the Union.

WE WILL NOT threaten our employees with loss of employment if they select the Union as their collective-bargaining representative.

WE WILL NOT threaten our employees that we will move our operations out of the State of California if they select the Union as their collective-bargaining representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights guaranteed in Section 7 of the Act.

MONTEREY DRILLING COMPANY

[12] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[13] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."